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General Assembly

FORTY-EIGHTH SESSION

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SIXTH COMMITTEE
4th meeting
held on
Tuesday, 5 October 1993
at 10 a.m.
New York

SUMMARY RECORD OF THE 4th MEETING

Chairman: Mrs. FLORES (Uruguay)

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The meeting was called to order at 10.20 a.m.

EXPRESSION OF SYMPATHY IN CONNECTION WITH THE RECENT EARTHQUAKE IN INDIA

1. The CHAIRMAN, on behalf of all the members of the Committee, expressed sympathy to the Government of India in connection with the recent earthquake in its country.

AGENDA ITEM 144: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SIXTH SESSION (continued) (A/48/17 and A/48/296)

2. Mr. MIRZAEE-YENGEJEH (Islamic Republic of Iran) said that, since its inception, the United Nations Commission on International Trade Law (UNCITRAL) had played a laudable role in developing the body of international rules governing trade among nations. Its seminars, symposia and workshops at the regional and international levels had been essential to the dissemination of those rules. His delegation believed that UNCITRAL should continue its activities with regard to both the harmonization of trade law and training and assistance.

3. The Iranian delegation noted with satisfaction that the Commission, during its twenty-sixth session, had finalized and adopted the draft Model Law on Procurement of Goods and Construction. The Commission had also decided to request the Working Group to prepare model statutory provisions on the procurement of services to be submitted to UNCITRAL at its twenty-seventh session. The completion of that project would undoubtedly be helpful to developing countries in the conduct of their procurement transactions.

4. His delegation also noted that the Commission had received the report of the Working Group on Electronic Data Interchange concerning the preparation of a uniform law on electronic data interchange (EDI). Such rules were needed because of the tremendous progress made in electronic communication and the utilization of such systems in international commerce.

5. It was gratifying to note from paragraph 274 of the UNCITRAL report (A/48/17) that, based on a decision by the Commission taken at its twenty-first session, the secretariat had established a system for collecting, and disseminating information on, court decisions and arbitral awards relating to the Conventions and Model Laws that had emanated from the work of the Commission. His Government further noted that the first two "Case law on UNCITRAL texts" (CLOUT) publications had been issued. That initiative would help practitioners to better understand the Commission's texts; promote a uniform interpretation of UNCITRAL rules; and contribute to the dissemination of the Commission's texts. Accordingly, it would be appropriate for the information gathered to be included in the programme of seminars and other training activities organized under the Commission's auspices.

6. The Commission had also considered a number of proposals for topics to be included in its future programme of work. With regard to the possible preparation of a legal guide on "privatization contracts", his delegation agreed with the Commission that, because the various issues requiring consideration

(Mr. Mirzaee-Yengejeh, Islamic Republic of Iran)

under that topic were outside the scope of trade law, and the policies of States regarding privatization differed considerably, the Commission should not undertake work concerning legislation relating to privatization. However, it might be helpful to study such reforms and their effects from an international perspective.

7. Secondly, while his delegation supported the Commission's decision, as reflected in paragraph 294 of document A/48/17, to proceed with the preparation of guidelines for pre-hearing conferences in arbitral proceedings, it believed that such a mandate could best be fulfilled if it was entrusted to one of the Commission's working groups, in which experts could contribute significantly to the proceedings.

8. Thirdly, his delegation agreed with the prevailing view in the Commission that issues of cross-border insolvency merited further consideration, and was looking forward to receiving the Secretariat's in-depth study concerning the desirability and feasibility of harmonized rules in that area.

9. Paragraph 8 of the Secretary-General's report concerning travel assistance to developing countries (A/48/296) stated that the incidence of expert representation of developing countries in meetings of UNCITRAL and its working groups continued to be very low. Such a presence was absolutely necessary, as it would undoubtedly facilitate the universal harmonization of international trade law. His delegation endorsed the Secretary-General's recommendations that the General Assembly should finalize the matter of travel assistance to the representatives of the least developed countries and, when necessary, to the representatives of other developing countries, at its current session.

10. Mr. ZHANG Kening (China) said that his delegation noted with satisfaction that UNCITRAL had formally adopted its Model Law on Procurement of Goods and Construction. The drafting of the Model Law and its wide application by various countries would promote the further development of international trade. In view of the fact that trade in services had become an increasingly important component of international trade, it was to be hoped that UNCITRAL would complete drafting uniform laws on the procurement of services at an early date, thus bringing to a close its valuable work on unifying laws in the field of government procurement.

11. His delegation had taken note of the concern UNCITRAL showed at the slow progress made by the Working Group on International Contract Practices. Since the purpose of the General Assembly in establishing UNCITRAL had been to unify and coordinate the different domestic laws and rules concerning international trade, it was desirable that delegations should refrain from insisting on their own domestic laws and rules, so as to ensure that the work of unifying laws proceeded smoothly.

12. It was gratifying to note that many UNCITRAL uniform rules and conventions had been widely accepted by the international community. In particular, unprecedented success had been achieved in the field of the international sale of goods. His delegation would seriously consider making use of, ratifying or acceding to the Model Laws and Conventions produced by UNCITRAL.

13. Mr. ROSENSTOCK (United States of America) expressed his delegation's pleasure that UNCITRAL had successfully completed the Model Law on the Procurement of Goods and Construction at its 1993 session. The Model Law reflected widely accepted principles for publicly-funded government purchasing and was fully consistent with existing GATT guidelines on procurement.

14. The United States strongly recommended that at its forty-eighth session the General Assembly should adopt a separate resolution commending UNCITRAL for another task well completed, endorsing the end product and recommending that States should adopt or use the Model Law as the basis for national legislation.

15. His delegation was pleased to note that the Commission was building upon its success concerning goods and construction with an addition which would cover the procurement of services, and that it intended to complete the task within one year.

16. The Commission's record was highly impressive. Its strengths stemmed from many sources - including the Secretariat, which had made a substantive contribution to its work. In that connection, his Government was concerned at the staff vacancies in the professional ranks of UNCITRAL. The assignment of priorities when saving money was critical, and weakening productive institutions was never wise. The United States was prepared to see the Sixth Committee and the General Assembly call for the filling of the existing vacancies as a means of underscoring the high priority that should be accorded to meeting the staffing needs of the UNCITRAL secretariat.

17. His Government believed that the current and future work programmes of the Commission were realistic, appropriate and responsive to real needs. It was aware of the benefit for all concerned of assisting States to attend meetings of UNCITRAL and its working groups. That was a matter for the Fifth Committee to consider in a broader context.

18. Mr. NEUHAUS (Australia) said that UNCITRAL had enabled the United Nations to play an active role in the development of international trade law through its work in reducing or removing legal obstacles to the flow of trade. Those obstacles had been created, in part, by the multiplicity of and divergences in national laws. His country's objective of promoting the harmonization of international trade law had prompted its active participation in the Commission's work since its inception in 1968.

19. Australia welcomed the development and adoption of the UNCITRAL Model Law on Procurement of Goods and Construction. With the elaboration of an additional chapter on the procurement of services, UNCITRAL would have adopted a comprehensive text dealing with major aspects of procurement. It was to be hoped that the text would be widely accepted and applied by the international community.

20. Australia recognized the importance of the Commission's work on the development of a draft uniform law on international guaranty letters and on electronic data interchange. It was continuing to participate actively in both the Working Group on International Contract Practices and the Working Group on Electronic Data Interchange.

(Mr. Neuhaus, Australia)

21. An increasingly important part of the Commission's work was in the area of training and technical assistance. In September 1993, UNCITRAL had participated in a meeting in Singapore hosted by the Pacific Economic Cooperation Council concerning the harmonization of international trade law instruments in the Asia and Pacific region. The purpose of the meeting, in which 18 countries had participated, had been to consider conventions and model laws concerning international arbitration in the sale of goods with a view to enabling Council member countries to share expertise and information on those texts and, ultimately, to promote their adoption more widely.

22. Australia had provided technical assistance to that initiative and had assisted in organizing the meeting. As the bulk of Australian trade was with the Asia and Pacific region, his country had a strong interest in regional developments in trade and investment law and was committed to promoting increased awareness of, and the practical application of, international trade law conventions in the region. Australia's forthcoming annual international trade law conference would also have a regional focus; in particular, it would look at recent legal developments in China, Japan and South Korea.

23. More broadly, Australia commended the continued operation of the "case law on UNCITRAL texts" (CLOUT) system as an additional tool for international trade law research. As the collection of abstracts of court decisions and arbitral awards grew, developments in international law could be more easily monitored. In addition, the availability of information on developments in the law of contracting States would assist in the task of harmonizing international trade law.

24. Mr. SIDI-ABED (Algeria) said that the importance of the issues dealt with by the Commission's various working groups, and the significant results which the Commission had achieved, confirmed its central role in the development of the rules governing international trade. Nevertheless, the Commission should not lose sight of one of its main objectives, namely, to promote the development of legal norms guaranteeing a minimum of fairness in international trade relations, and to ensure proper treatment for the developing countries, so as to enable them to overcome the difficulties created by new economic realities.

25. His delegation believed that the UNCITRAL Model Law on Procurement of Goods and Construction constituted a major contribution to the rules of international trade; it could effectively reduce the time required for international procurement, and could ensure transparency in the procedures relating to procurement.

26. Another important aspect of the Commission's work was the fact that such rules served as a model for developing countries in the reform of their national legislation. His country, which was undergoing a transition to a market economy, would ensure that its procurement laws were based on the UNCITRAL Model Law and that its commercial practices were fully compatible with the relevant international norms.

(Mr. Sidi-Abed, Algeria)

27. The development of a similar law covering the procurement of services would also be extremely helpful. Naturally, such a law should take into account existing practices within the various legal systems. Model statutory provisions governing the procurement of services must not conflict with the international commercial norms in force or in preparation, such as the UNCITRAL Model Law. Furthermore, it would be prudent to adopt a very flexible approach in developing such provisions, so as to ensure the harmonization of legal systems.

28. His delegation noted with satisfaction the significant efforts made with regard to the harmonization of legal norms and practices relating to electronic data interchange (EDI). There was a pressing need to develop provisions in that area which, once adopted, would constitute a framework for the preparation of a model communication agreement. The developed countries must also take into consideration the technical and material difficulties experienced by the developing countries in that area.

29. With regard to the reports of the Working Group on International Contract Practices (A/48/17, chap. IV), his delegation commended the Group for the work accomplished and hoped that it would be completed before the Commission's 1995 session.

30. Lastly, his delegation wished to underscore the importance of granting financial assistance to the developing countries, especially the least developed countries, which were members of UNCITRAL, so as to ensure their full participation in the Commission's meetings and those of its working groups.

31. Ms. BOUM (Cameroon) noted with satisfaction that UNCITRAL had completed and adopted the draft Model Law on Procurement of Goods and Construction. She stressed that the Model Law should be just that: a model for countries wishing to improve their relevant legislation and their procurement practices or to draw up legislation in that area; it should not be used to impose conditions for the financing of development projects. The Working Group on the New International Economic Order should now proceed to draw up a draft on procurement of services, bearing in mind the need for compatibility with the work done by GATT.

32. She was pleased to note that the Working Group on Electronic Data Interchange would be developing a model law on that subject. She hoped that the Working Group on International Contract Practices would be able to finish its work on guarantees and stand-by letters of credit before the twenty-eighth session of the Commission in 1995. Her delegation attached great importance to the matter of training and technical assistance, and noted with satisfaction that the UNCITRAL secretariat had strengthened its activities in that field.

33. Turning to the future programme of work of UNCITRAL, she said that her delegation was of the view that in choosing subjects for codification, the Commission should bear in mind the need to overcome obstacles to the development of international trade, as well as overall development. Lastly, she stressed the need to ensure full participation of the developing countries in the process of unifying international trade law.

34. Mr. ORDZHONIKIDZE (Russian Federation) said that the main achievement of the Commission at its twenty-sixth session had been the completion of its work on the Model Law on Procurement. The Model Law should set an example for establishing unified norms to regulate procurement, in particular by Governments, by ensuring that financial resources were spent efficiently and preventing the emergence of circumstances favouring abuse and corruption. Many of its provisions were of a universal nature and could be used in the drafting of national legislation. For the Russian Federation, which was currently updating its legislation, the Model Law was of great practical significance since it was concerned with optimizing the centralized import of goods and services.

35. Since services were accounting for an ever-increasing portion of world trade, it was vital for the Commission to continue its work in that field. It might be possible either to prepare an additional chapter for the Model Law on Procurement or, taking into account the specific nature of services, to draft a separate model law on the procurement of services.

36. It was also important for the Commission to continue its work in two other fields: namely, resolving legal issues when drafting contractual arrangements using electronic data interchange, and the drafting of a convention (or model law) on independent guarantees and stand-by letters of credit. The adoption of such a convention or model law would provide a legal basis for the standardized application of a form of ensuring financial, commercial and other commitments - namely, the independent guarantee. For the Russian Federation, whose legislation in that field only recognized the institution of guarantees, the drafting of such a text would be particularly important. The existence of a model law on independent guarantees would fill the gaps in laws regulating relations between those involved in economic activity. The law would play a useful role in government procurement and would be particularly relevant for commercial structures like trade enterprises and commercial banks which were emerging in the market in order to ensure the requisite legal regulation of financial and commercial credits and to speed up payments.

37. The practical implications for his Government of UNCITRAL's work had been demonstrated in 1993 by the adoption of the Law on International Commercial Arbitration which was based on the UNCITRAL Model Law on International Commercial Arbitration. In response to the Commission's decision that States should designate national correspondents to provide information on arbitral awards and court decisions in connection with the application of UNCITRAL conventions and model laws, the Russian Federation had appointed the president of the international commercial arbitration court, Mr. Komarov, to the Russian Chamber of Commerce and Industry.

38. His delegation wished to return to the issues raised during the 1992 Congress on International Trade Law, in particular the question of the regulation of operations involving barter or the exchange of goods by drafting an appropriate norm which could be an addition to the 1980 Vienna Convention on Contracts for the International Sale of Goods. Another important issue concerned the uniformity of contract conditions concerning fines and assistance to the development of commercial arbitration.

(Mr. Ordzhonikidze, Russian Federation)

39. His delegation noted with satisfaction that the Commission had given active consideration to proposals made by the participants in the Congress. In its opinion, the preparation of draft guidelines for pre-hearing conferences in arbitral proceedings would enable participants in such proceedings to prepare in an appropriate way for the various stages of the proceedings. Other issues to be considered by the Commission were also important and forward-looking, namely the assignment of claims, the legal aspects of insolvency and bankruptcy, legal issues in privatization, and the Build, Operate and Transfer (BOT) project financing concept. All those issues could be looked at thoroughly in the Commission's working groups.

40. The Commission should maintain its leading role among international bodies dealing with international trade law. At the same time, it was vitally important that States should be able to take advantage of assistance provided by the relevant international bodies in drafting domestic legislation. The Commission's coordinating role should be therefore strengthened in that context.

41. The Commission's work in the area of training and technical assistance was crucial. The secretariat had developed a broad programme in that field; his delegation welcomed that approach, as described in chapter IX of the Commission's report (A/48/17) and hoped that such activities would be of practical use to those States with transitional economies.

42. Mr. YAMAMOTO (Japan) noted with satisfaction the adoption by UNCITRAL of the Model Law on Procurement of Goods and Construction, which had been drafted by the Working Group on the New International Economic Order. It was to be hoped that the Model Law would be useful to developing countries or countries undergoing transition.

43. Nevertheless, Japan had reservations as to whether the question of procurement of services should be discussed at the Working Group's next session. There was a need to observe how the Model Law on Procurement of Goods and Construction was accepted by each country before that question could be considered. Work was currently under way within the framework of the General Agreement on Tariffs and Trade (GATT) to expand the scope of government procurement by revising the GATT Agreement on Government Procurement to cover services. Accordingly, it was important to ensure that there was no duplication and that the Commission's efforts were coordinated with those of GATT. Furthermore, in some countries, including Japan, the laws regulating government procurement were classified as public law; accordingly, it might not be appropriate for UNCITRAL to take up the issue of procurement of services which, in the future, might be included in laws regulating government procurement. His Government stressed the importance of ensuring that, if UNCITRAL did take up that issue, its traditional expert and technical nature was not compromised by political factors.

44. Japan noted with satisfaction that the Working Group on International Contract Practices was continuing its work on a uniform law on guarantees and stand-by letters of credit. At the same time, his delegation expressed concern that the work appeared to be behind schedule, and hoped that it could be completed before 1995. Furthermore, in drafting the articles relating to tentative measures and jurisdiction, the Working Group should give due and

(Mr. Yamamoto, Japan)

careful consideration to the legal system of each country, since those articles related directly to procedural law.

45. Japan expressed appreciation to the Working Group on Electronic Data Interchange for its work in preparing a draft uniform law on electronic data interchange (EDI) and related means of trade data communication. His Government was of the view that uniform rules on EDI should take the form of a model law, since the area was one of rapid technological innovations. Although many international organizations were working on uniform trade laws, UNCITRAL was the most appropriate body to coordinate the various efforts. Ongoing cooperation was needed so as to avoid duplication.

46. Mr. ABOULMAGD (Egypt) expressed sympathy to the people and Government of India in connection with the recent earthquake in that country.

47. His delegation welcomed the adoption by UNCITRAL of the Model Law on Procurement of Goods and Construction and the Guide to Enactment of the Model Law and the establishment by its secretariat of the "Case law on UNCITRAL texts" (CLOUT) system.

48. Egypt was fully convinced of the importance of the unification of international trade law, and it had therefore acceded to and ratified all of the UNCITRAL conventions thus far adopted and was currently elaborating its own law on international commercial arbitration inspired by the UNCITRAL Model Arbitration Law.

49. Egypt was concerned at the low level of participation by developing countries in the work of the Commission and in the deliberations of its working groups. The full representation of different legal systems in the Commission's work was essential if conventions and model laws were to be balanced and thus capable of the widest acceptance. In recent times, the necessary balance had been seriously disturbed to the detriment of the developing countries, and that would have an adverse impact on the form and character of the Commission's work and on the ability and readiness of the developing countries to accede to conventions or enact model laws in whose formulation they had been unable to participate.

50. Egypt had supported the adoption of General Assembly resolution 47/34 requesting the Fifth Committee to continue to consider granting travel assistance to the least developed countries and other developing countries that were members of the Commission to enable them to participate in the sessions of the Commission and its working groups. The report of the Secretary-General on the implementation of that resolution (A/48/296) left no doubt that representation of developing countries was indeed very low and that hardly a third of them had representation at the meetings of all three working groups. The holding of consecutive meetings of the working groups would not provide a satisfactory solution, for the reasons given in the report of the Commission on that matter. The problem was further exacerbated by the possibility that a number of developing countries might seek to limit the activities of the Commission and to reduce the number of its working groups that met at the same time.

(Mr. Aboulmagd, Egypt)

51. His delegation hoped that a satisfactory solution would be found at the current session and that the necessary financial resources would be made available. That could only be achieved if there was a genuine conviction that the equitable representation for which provision had been made on the establishment of the Commission could be combined with a matching desire to enable all of its members to participate equally in its work. Only then could the Commission perform its functions in the unification of international trade law in the desired manner and in accordance with its mandate.

52. Mr. MARTENS (Germany) said that his delegation was pleased to note that UNCITRAL had adopted a draft Model Law on Procurement of Goods and Construction, as well as a commentary designed to give guidance to legislatures preparing legislation based on the Model Law. It was regrettable, however, that the Model Law did not cover the procurement of services. His delegation endorsed the draft resolution proposed by UNCITRAL, and recommended that all States which did not have provisions on procurement should adopt such laws, based on the UNCITRAL Model Law.

53. With regard to the future programme of work of UNCITRAL, he said that his delegation strongly supported the plan to discuss draft guidelines on pre-hearing conferences in arbitral proceedings at the Commission's 1994 session. He wished to stress, however, that in preparing the UNCITRAL work programme, the Commission and the secretariat should consider, in each case, whether a strong international need existed for the respective topics and whether Member States could be expected to enact and implement the results achieved by UNCITRAL. In order to optimize efforts, the work of other international bodies should also be taken into account. Duplication of efforts should be avoided, particularly in view of the recommendation in General Assembly resolution 47/34 that the Commission should pay special attention to the rationalization of the organization of its work. However, his delegation did not believe that the holding of consecutive meetings of UNCITRAL working groups would result in savings. Every working group consisted of national experts who would be different for different topics. Consequently, no savings in travel costs could be expected.

54. Lastly, his delegation wished to express its concern at the low representation of developing countries on UNCITRAL. It hoped that the Fifth Committee would conclude its consideration of that issue in the very near future.

55. Mr. POLITI (Italy) said that his delegation deeply appreciated the adoption of the UNCITRAL Model Law on Procurement of Goods and Construction, and looked forward to the preparation by the Commission of model provisions on the procurement of services.

56. He wished to commend the Commission for the progress it had made towards preparing legal rules on electronic data interchange (EDI) and a draft uniform law on guarantees and stand-by letters of credit. The first two "Case law on UNCITRAL texts" (CLOUT) publications would greatly enhance the understanding and the uniform application of the statutory texts covered by the system. His delegation welcomed, in particular, the Commission's intention to include the

(Mr. Politi, Italy)

information gathered by the CLOUT system in the seminar programmes and other training activities organized under its auspices. He was glad to note that the report mentioned the possibility of cooperation between the CLOUT system and the Centre for Comparative Legal Studies, a joint venture between the Italian National Research Council, the University "La Sapienza" of Rome, and the International Institute for the Unification of Private Law (UNIDROIT).

57. Italy noted with satisfaction that the UNCITRAL Congress, whose proceedings it hoped to see published quickly, had suggested a number of very interesting topics, such as pre-hearing conferences in arbitral proceedings, assignment of claims and cross-border insolvency. In closing, he wished to underline the importance of the Commission's training and assistance programme, which would increase awareness of the Commission's work and of its legal texts.

58. Mr. MOLNAR (Hungary) said that the adoption by UNCITRAL of the draft Model Law on Procurement of Goods and Construction was a major achievement. Since Hungary was also in the process of improving its laws in the field of procurement, it attached great significance to the adoption of the Model Law. The draft Guide to Enactment of the Model Law on Procurement would also play an important role in the drafting of legislation based on the Model Law. Since Hungary agreed that a comprehensive model for legislation on procurement was needed, it supported the suggestion that the scope of the Model Law should be expanded to cover procurement of services as well.

59. His delegation also welcomed the fact that the Working Group on Electronic Data Interchange had started to work out a uniform law on that subject. Hungary also attached great importance to training and assistance, and supported the endeavours of the secretariat to carry out an extensive programme designed to make the achievements of the Commission more widely known. His delegation was fully satisfied with the progress made by UNCITRAL on various other subjects, and supported its work in those areas. His delegation was prepared to make further contributions, also as a member of UNCITRAL, to efforts within the United Nations to harmonize and unify the principles and norms of international law. Lastly, he wished to express his delegation's appreciation to the UNCITRAL secretariat, whose professional competence had been one of the factors that had contributed to the Commission's success at its twenty-sixth session.

60. Mr. CHALYI (Ukraine) said that his country was a party to many instruments drafted under the auspices of UNCITRAL, including the United Nations Convention on the Limitation Period in the International Sale of Goods, which it had ratified in 1993. In addition, a draft law on international commercial arbitration, based on the UNCITRAL model law on that subject was currently under consideration in the Ukrainian Parliament. The provisions of the Model Law were in practice operating in Ukraine, and the Model Law had also been used as a basis for the regulations on international commercial arbitration by the Chamber of Commerce of the Ukraine, which had been set up at the end of 1992.

61. His delegation welcomed the completion of work on the Model Law on Procurement of Goods and Construction. The aims which had guided UNCITRAL in drafting the Model Law, namely transparency and openness in procurement, were

(Mr. Chalyi, Ukraine)

especially relevant for the establishment of a market economy. Since the public sector made up almost all of the economy of Ukraine, his country was looking closely at the possibility of introducing domestic legislation in the field in the near future.

62. His delegation took particular note of a new element in the codification work of UNCITRAL, namely the draft Guide to Enactment. It agreed with previous speakers about the need speedily to complete work on the unification of norms regulating the procurement of services.

63. With regard to the Commission's future work programme, work on the standardization of legal issues in electronic data interchange and the preparation of unified law on guarantees and stand-by letters of credit were of particular importance.

64. In the context of developing foreign trade relations, Ukraine considered the problems of cross-border insolvency and assignment of claims to be highly relevant. It did not fully agree with the Commission's decision to postpone consideration of legal issues in privatization. The aspects of privatization concerning principles governing and conditions for participation in privatization by foreign investors merited the immediate attention of UNCITRAL and could soon be standardized. A single standard could thus be established in that field, which would be of genuine assistance to countries in transition to a market economy.

65. His delegation greatly appreciated the work of UNCITRAL in training and technical assistance, in particular the seminar held in Kiev in 1993 under the auspices of the Commission. The expansion of the Commission's activities in that field would enable the wider dissemination of its ideas and aims, and facilitate the implementation and dissemination of its legal instruments. Furthermore, the adoption of the legal instruments would strengthen the information work of the UNCITRAL secretariat in notifying Member States of the status of the basic legal instruments.

66. In the light of the Commission's work at its twenty-sixth session, his delegation supported the Commission in connection with the points it had raised with regard to improving the way in which it was financed, which would be considered by the Fifth Committee.

67. Mr. NASIER (Indonesia) commended UNCITRAL for its work on the draft Model Law on Procurement of Goods and Construction, and noted that the purpose of the Model Law was to provide a framework and not to establish regulations. Accordingly, States would be able to undertake the implementation of procurement regulations and fill in the relevant details without having to compromise the objectives of the Model Law. His delegation hoped that the Commission would undertake further work on the drafting of model provisions on the procurement of services.

(Mr. Nasier, Indonesia)

68. His delegation also appreciated the efforts of the Working Group on Electronic Data Interchange in preparing uniform rules in that area. As that was a new and highly complex technical field, he agreed that the secretariat should continue to monitor legal developments in other organizations and report to the Commission at its next session, so as to facilitate its further work. With regard to training and assistance, he noted that in view of the scarcity of resources the secretariat had accommodated requests from third world nations and newly independent States by emphasizing national seminars more than regional ones. His delegation had been gratified that the Commission had cooperated with the Indonesian Ministry of Foreign Trade in holding seminars in Jakarta and Surabaya.

69. Indonesia hoped that the Working Group on International Contract Practices could complete its work on the draft Convention on International Guaranty Letters by the 1995 session. It also appreciated the Commission's review of the status of international conventions, and extended its support for possible future programmes. Equally important was the coordination of the Commission's efforts with those of other bodies, particularly in the promotion of its legal texts and guides.

70. Lastly, his delegation wished to commend the secretariat for the introductory notes it had prepared in connection with some of the topics suggested at the UNCITRAL Congress. Some of the key issues that were of vital interest to the developing countries, especially the countries of the Asian region and Indonesia, were those pertaining to international commercial contracts, commodities, the transfer of technology, industrial and intellectual property, international payments, transport, and commercial arbitration. If relevant rules were formulated by the Commission, it would increase the participation of those States in UNCITRAL.

71. Mr. MOHAMMED (Chairman, United Nations Commission on International Trade Law) thanked the members of the Committee for the constructive comments they had made. He would bring to the attention of the Commission all the observations that had been made during the discussion.

The meeting rose at noon.

UNITED NATIONS

General Assembly

FORTY-EIGHTH SESSION

Official Records

SIXTH COMMITTEE
5th meeting
held on
Wednesday, 6 October 1993
at 10 a.m.
New York

SUMMARY RECORD OF THE 5th MEETING

Chairman: Mrs. FLORES (Uruguay)

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AGENDA ITEM 146: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

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The meeting was called to order at 10.20 a.m.

AGENDA ITEM 146: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (A/48/33; A/48/140-S/25597; A/48/205-S/25923; A/48/209-S/25937; A/48/379-S/26411 and A/48/445-S/26501)

1. Mr. KOURULA (Finland), Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, introducing the report of the Special Committee (A/48/33), said that since its inception, the Special Committee had been mandated to examine three broad issues: the maintenance of international peace and security, the peaceful settlement of disputes, and the strengthening of the role of the Organization. The Secretary-General's report "An Agenda for Peace" (A/47/277-S/24111) had no doubt given added momentum to and spurred interest in the Special Committee's work on those issues, an interest which was demonstrated clearly by the growing number of requests for observer status with that Committee from both States Members of the United Nations and those having observer status with the Organization. In addition, for the first time observers from the nine intergovernmental organizations mentioned in paragraph 9 of the report had been invited to attend the Committee's 1993 session and present their views at meetings at which the item on cooperation between the United Nations and regional organizations in the maintenance of international peace and security had been considered.

2. Reviewing the general debate at the Special Committee's 1993 session, he noted that emphasis had been placed on the importance of that Committee's work at a time when the United Nations was faced with new and unprecedented challenges. A number of structural proposals had been made with a view to enhancing the Organization's ability to respond effectively to those new demands. Lengthy consideration had been given to the composition and work of the Security Council; it had been noted that the Council was finally functioning in the manner intended by the drafters of the Charter. A stronger role for the General Assembly in preserving world peace had been called for. In addition, the need to enhance the role of the International Court of Justice had been emphasized and, to that end, it had been suggested that the Secretary-General should be authorized to seek advisory opinions from the Court.

3. During the general debate it had also been observed that the Charter system of collective security was not being fully implemented. It had been suggested that the Special Committee should consider all aspects of that issue and develop general and flexible guidelines, possibly in the form of a declaration. Mention had been made of the possibility of convening, pursuant to Article 109 of the Charter, a General Conference for the purpose of reviewing the Charter.

4. At its 1993 session, the Special Committee had considered six working papers relating to the question of the maintenance of international peace and security. It had first considered a document entitled "Draft declaration on the improvement of cooperation between the United Nations and regional organizations", submitted by the Russian Federation (A/48/33, para. 28) and the amendment thereto proposed by Mexico. The document had provided a broad base for the extended discussion held by the Special Committee on possible means of

(Mr. Kourula, Finland)

collaboration between the United Nations and regional organizations in the maintenance of international peace and security, a topic of contemporary interest. However, many delegations and intergovernmental organizations had expressed views that had gone beyond the confines of those contained in the document. The definition per se of regional arrangements or agencies under Chapter VIII of the Charter had not been debated at great length. The need for enhanced cooperation between the United Nations and regional organizations had been unanimously recognized and the question of whether cooperation should be limited solely to the maintenance of international peace and security had been raised frequently. Several States and organizations had emphasized the autonomous status of regional organizations in relation to the United Nations; at the same time, the limitations of such organizations' powers, as provided for under Chapter VIII of the Charter, had been universally recognized. The importance of exercising flexibility in effecting such cooperation in different regions had been stressed: effective coordination could only be achieved through recognition of the special characteristics of each region and the particular situation involved.

5. The Special Committee was likely to continue its consideration of the topic of cooperation between the United Nations and regional organizations. Since the matter involved issues of competence as well as legal questions, it might well be necessary to establish practical guidelines for such cooperation, possibly in the form of a handbook.

6. The Special Committee had then considered a working paper submitted by Cuba entitled "Strengthening of the role of the United Nations in the maintenance of international peace and security" (A/48/33, para. 90), a revised version of an earlier draft. It had subsequently considered a revised proposal submitted by the Socialist People's Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security (A/48/33, para. 93) and had then considered a revised working paper entitled "New issues for consideration by the Special Committee", submitted by the Russian Federation (A/48/33, para. 95).

7. Lastly, the Special Committee had considered a working paper entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter" (A/48/33, para. 98), submitted by Bolivia, Bulgaria, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Malta, Mauritania, Mongolia, Mozambique, Nicaragua, Panama, Paraguay, the Republic of Moldova, Romania, Ukraine and Uruguay, and another working paper bearing the same title, submitted by India and Nepal (A/48/33, para. 99).

8. The Special Committee had given lengthy consideration to the question of the implementation of Article 50 of the Charter, focusing its debate on the economic implications for third States of the applications of sanctions imposed under Security Council resolutions. The need to assist affected States had been universally recognized. There had, however, been differing views on three points: a single fund versus separate funds; the need for alternative mechanisms; and the preparation of a set of guidelines for consideration of applications from affected States. There had also been disagreement on the

(Mr. Kourula, Finland)

issue of an automatic right to compensation versus the right to consult with the Security Council regarding appropriate measures to be taken under Article 50. The complexity of the issue was widely acknowledged: it had been addressed by both the Security Council and the General Assembly and debate was continuing in the informal working group on "An Agenda for Peace".

9. In its debate on the item on the peaceful settlement of disputes between States, the Special Committee had considered a revised draft document entitled "United Nations rules for the conciliation of disputes between States", submitted by Guatemala (A/48/33, para. 122). While it generally considered the revised draft to be more flexible and concise than the earlier version, the Committee had called for an even less complicated text. The question had been raised as to whether there was a need to add a new text to the numerous instruments on conciliation that already existed. In reply, it had been suggested that the proposed rules might serve as model rules. Certain new developments concerning conciliation had not been reflected in the revised draft and, accordingly, Guatemala had offered to prepare a new version and to submit it well in advance of the Special Committee's next session.

10. The Special Committee had also had before it a communication from the Legal Counsel concerning the United Nations Decade of International Law (A/48/33, para. 160).

11. The Special Committee had been mandated to consider a set of items which were both difficult and topical; such issues could not be resolved overnight. At the same time, considerable progress had been made in many areas: at its most recent session, the Special Committee had been able to identify certain key points on which further debate was needed. Through the sustained and collaborative efforts of its members, the Special Committee had demonstrated its continuing relevance in the areas of its mandate. It was to be hoped that through its constructive evaluation of the report before it (A/48/33), the Sixth Committee would continue to provide guidance to the Special Committee.

The meeting rose at 10.40 a.m.

UNITED NATIONS

General Assembly

FORTY-EIGHTH SESSION

Official Records

SIXTH COMMITTEE
6th meeting
held on
Friday, 8 October 1993
at 10 a.m.
New York

SUMMARY RECORD OF THE 6th MEETING

Chairman: Mrs. FLORES (Uruguay)

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WELCOME TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, THE VICE-PRESIDENT, OTHER MEMBERS OF THE COURT AND ITS REGISTRAR

AGENDA ITEM 146: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

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Distr. GENERAL
A/C.6/48/SR.6
22 October 1993

ORIGINAL: ENGLISH

93-81463 (E)

The meeting was called to order at 10.20 a.m.

WELCOME TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, THE VICE-PRESIDENT, OTHER MEMBERS OF THE COURT AND ITS REGISTRAR

1. The CHAIRMAN welcomed the President of the International Court of Justice, Sir Robert Jennings, the Vice-President, Mr. Oda, judges Mr. Schwebel, Mr. Weeramantry and Mr. Herczegh, and the Registrar, Mr. Valencia-Ospina.

AGENDA ITEM 146: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/48/33; A/48/140-S/25597; A/48/205-S/25923; A/48/209-S/25937; A/48/379-S/26411 and A/48/445-S/26501)

2. Mrs. TSONEVA (Bulgaria) said that her delegation considered the draft document on aspects of the cooperation between the United Nations and regional organizations submitted by the Russian Federation (A/48/33, para. 28) to be very important in the new international climate. The need to implement the provisions of Chapter VIII of the Charter of the United Nations had been made all the more urgent by the current world situation in which regional processes of security, cooperation and integration were being strengthened but armed conflicts were on the increase. For that reason Bulgaria supported the use of regional bodies for preventive diplomacy and to maintain and strengthen peace. Bulgaria had been one of the first States to endorse the idea of granting of observer status at the General Assembly to the Conference on Security and Cooperation in Europe (CSCE) and it hoped that relations between the United Nations and CSCE would serve as an example for other regional organizations.

3. The question of the effectiveness of the United Nations Security Council with regard to peace and security was most topical. There were now 184 States Members of the United Nations and that should be reflected in the composition of its organs on the basis of equitable geographical distribution. It would therefore be useful to broaden the composition of the Security Council, whose power and responsibility should be adapted to the increase in its diplomatic activities.

4. The most important document discussed during the latest session of the Special Committee had been the working paper submitted by nineteen countries and entitled "Implementation of the provisions of the Charter of the United Nations related to the assistance to third States affected by the application of sanctions under Chapter VII of the Charter" (A/48/33, para. 98). The lively discussion had shown that many States were looking for a legal settlement of the issue. There was no mechanism to implement Article 50 of the Charter. As sanctions had become a regular feature of the Security Council's practice it was vital to find a permanent structure to study and resolve economic problems arising from the implementation of sanctions.

5. Bulgaria had suffered and was continuing to suffer enormous losses, which were almost equal to its external debt, as a result of sanctions imposed by the Security Council and could not accept a resolution of the problem on a case-by-case basis, which was what had been proposed for a very long time. If

(Mrs. Tsoneva, Bulgaria)

no way was found to compensate third States affected by the application of economic sanctions the subsequent losses would have extremely serious repercussions on their economic, political and social development. Article 50 of the Charter gave no legal support, since it no longer corresponded to the world situation. Therefore, Bulgaria considered that a working group on Article 50 should be set up for the following session of the Special Committee.

6. Bulgaria had already put forward proposals on the creation of a mechanism to implement Article 50 of the Charter, contained in document A/48/445-S/26501, and called on all countries to help find a just and equitable solution to the problem.

The meeting rose at 10.30 a.m.

UNITED NATIONS

General Assembly

FORTY-EIGHTH SESSION

Official Records

SIXTH COMMITTEE
7th meeting
held on
Monday, 11 October 1993
at 3 p.m.
New York

SUMMARY RECORD OF THE 7th MEETING

Chairman: Mrs. FLORES (Uruguay)

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AGENDA ITEM 146: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

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Distr. GENERAL
A/C.6/48/SR.7
8 November 1993
ENGLISH
ORIGINAL: FRENCH

93-81493 (E)

The meeting was called to order at 3.10 p.m.

AGENDA ITEM 146: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/48/33 and Corr.1, A/48/140-S/25597, A/48/205-S/25923, A/48/209-S/25937, A/48/379-S/26411, A/48/445-S/26501 and A/48/398)

1. Mr. LEONI (Brazil) said that the recently signed agreement between Israel and the Palestine Liberation Organization was a historic example of how traditional patterns of confrontation could be overcome, but on the other hand economic inequalities persisted and the resurgence of ethnic, religious and other disputes threatened the achievement of the fundamental goal of peace. The apparent contradiction between the disappearance of ideological rivalries and the continuation of areas of instability must prompt a re-evaluation of the United Nations and its Charter, which was the fundamental objective of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

2. According to the mandate set out in resolution 47/38, the Special Committee had been studying three principal issues: the maintenance of international peace and security, the peaceful settlement of disputes, and the strengthening of the role of the Organization. With regard to the maintenance of international peace and security, the Special Committee had thoroughly analysed a revised version of the paper submitted by the Russian Federation entitled "Draft declaration on the improvement of cooperation between the United Nations and regional organizations" (A/AC.182/L.72/Rev.1). Such cooperation was becoming increasingly important for the strengthening of international peace and security. A better definition of the responsibilities of the United Nations and of regional organizations would contribute to the effectiveness of the collective security system established in Chapter VIII of the Charter. Brazil's understanding was that the United Nations and the regional organizations should be mutually complementary on the basis of full respect for the mandates and fields of competence of each body. Coordination of the efforts of regional organizations with those of the United Nations would ensure the most effective response to a threat to international peace and security.

3. It was undeniable that the capacity of a regional organization to cope with specific situations served the maintenance of international peace and security. In the case of a disruption of democracy, for example, the Organization of American States (OAS) had its own mechanisms and methods of dispute settlement under articles 2 and 3 of its Charter. Those provisions demonstrated that regional arrangements could play a valuable role in an event internal to a State, a role not envisaged in the Charter of the United Nations.

4. The participation in the 1993 session of the Special Committee of the most senior officials of numerous regional organizations had been particularly useful: the Special Committee's work had been greatly enriched by the expertise and experience of the representatives of intergovernmental organizations. In that respect, and in view of the emergence of many regional conflicts in the new international situation, the Brazilian delegation wished to encourage the holding of meetings - on a regular basis or in times of crisis - between the Secretary-General of the United Nations and the heads of regional organizations.

(Mr. Leoni, Brazil)

Closer ties should also be established between officials at various levels of the United Nations and regional organizations.

5. In his report "An Agenda for Peace" the Secretary-General asked all regional organizations to consider what confidence-building measures might be applied in their regions and to inform the Organization about them. The Brazilian delegation also welcomed the second paper submitted by the Russian Federation entitled "New issues for consideration in the Special Committee", which could provide the basis for the choice of topics for the long-term programme of work of the Special Committee.

6. Another move with regard to the maintenance of international peace and security had been the submission by several States, including Brazil, of a revised working paper entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter" (A/AC.182/L.76/Rev.1). The issue had become more urgent in step with the increased recourse of the Security Council to Chapter VII of the Charter and the increasing economic interdependence of States. The international community should give serious consideration to the questions raised in the working paper, in particular the idea of sharing the costs of a collective security system, the principle of "mutual assistance", and the need to study specific techniques for providing assistance to States affected by the implementation of sanctions.

7. The establishment of procedures for implementation of Articles 49 and 50 of the Charter was a complex and time-consuming endeavour. A particular difficulty was the need to identify criteria for assessing the special economic problems confronting States as a result of the application by the Security Council of preventive or enforcement measures under Article 50 of the Charter. A mechanism might be devised for that purpose which could be financed mainly through special windows of credit in international financial institutions such as the World Bank. The resources would be used to provide direct financial assistance and to support technical cooperation projects.

8. On the question of the peaceful settlement of disputes, the Brazilian delegation paid a tribute to the initiative taken by Guatemala: the text proposed by Guatemala could lead to the establishment of model rules which might facilitate recourse to conciliation and therefore the achievement of the ultimate goal of universal peace.

9. With regard to the wider participation of the international community in the decision-making process of the United Nations, in particular of the Security Council, it should be noted that the rapidly changing international environment had indeed prompted the Security Council to speed up its process for taking decisions on increasingly complex issues, but the growth in the membership of the Organization was not properly reflected in the composition of the Council. As Brazil had already informed the Secretary-General, if the Council's composition was more representative and balanced, its actions would be more effective and the authority of its decisions enhanced. In 1945 the Security Council had had 11 members, representing more than 20 per cent of the membership of the Organization; today less than 9 per cent of the States Members of the Organization were members of the Council. The adoption by consensus of

(Mr. Leoni, Brazil)

resolution 47/62, which Brazil had co-sponsored, showed that the international community recognized that the time had come to reassess the composition of the Security Council in the light of the substantial increase in the membership of the United Nations and of the ever more active and important role which the Council was called upon to play.

10. Brazil's Minister for External Relations, Mr. Celso Amorim, had noted with satisfaction the virtual consensus on the need to update the composition of the Security Council. The reform of the Council must be achieved without aggravating further the balance between developed and developing countries in the decision-making process of the United Nations. The General Assembly, as the Organization's supreme democratic organ, must play a decisive role in that process.

11. Mr. VANHARA (Czech Republic) said that the Czech Republic, which had been admitted to membership in the United Nations following the division of Czechoslovakia, had been appointed by the President of the General Assembly in January 1993 to fill the vacant seat in the Special Committee on the Charter. It would like to continue to participate in the work of that body and thus honour the tradition bequeathed to it by the Czech and Slovak Federal Republic - a founding member of the United Nations.

12. Changes in the political map of the world and the increase in the membership of the Organization had transformed it into a truly universal institution whose authority was irreplaceable in international relations. The Czech Republic understood the calls for the adaptation of the United Nations to the challenges of the new era which had begun with the disappearance of bipolar politics. The international community should, however, be aware that abrupt adjustments might undermine the functioning of the mechanism as a whole. His Government believed that preference should be given to a long-term process of evolution which would combine the adoption of the relevant international legal instruments with indispensable administrative reform.

13. The general debate which had taken place within the Special Committee and which was reflected in the Committee's report (A/48/33) had demonstrated that some States considered that the time had come to undertake a profound revision of the Charter. The Czech Republic agreed that outdated provisions should be eliminated from the Charter, for example Article 53, paragraph 2, which contained the definition of an "enemy State". However, instead of revising the Charter as a whole, it might be preferable to redefine some of the basic principles on which it was built, for example the principle of equal rights and self-determination of peoples. In various declarations, the General Assembly had expressly set forth the right of peoples to struggle and to seek and receive support in order to achieve self-determination. Now that the Trusteeship Council had almost completed its mandate and the period of decolonization had come to an end, the question should perhaps be reconsidered; it might now be appropriate to state that the right of peoples to self-determination should be achieved by peaceful means and without threat to international peace and security.

14. As one of the smallest States of central Europe, the Czech Republic favoured unconditional respect for international obligations arising from the

(Mr. Vanhara, Czech Republic)

basic international legal instruments, such as the Charter of the United Nations. That was why his Government could not support attempts to interpret the Charter too broadly. Creativity in that area might jeopardize legal certainty and predictability in international relations. With regard to the possible restructuring of the Security Council, its functioning during the past 48 years had proven the need to preserve the category of permanent members. The question of the Council's membership was being widely discussed and, in the opinion of some, the changes of recent years should be reflected in that membership. Care should nevertheless be taken not to undermine the constructive operational decision-making mechanism of that extremely important organ. Precipitate decisions might call the system of collective security into question.

15. Like others, his delegation considered that the current challenges to international peace and security had confirmed the need for the full use of Chapter VIII of the Charter. It therefore commended the initiative of the Russian Federation, which had submitted a revised draft document on the improvement of the cooperation between the United Nations and regional organizations (A/AC.182/L.72/Rev.1). The discussion within the Special Committee had shown that cooperation between the United Nations and regional organizations could not be a one-way street. On the contrary, for the participation of regional organizations in the collective system of international security to be of value, the Organization must respect the role, autonomy and position of each one. It should also take advantage of methods for the peaceful settlement of disputes which were frequently used in some regions, as well as of methods used within the framework of preventive diplomacy. The draft document submitted by the Russian Federation would constitute a valuable basis for further work once it had been modified to take into account the opinions expressed by various delegations. He hoped that the sponsor would strive to define what exactly was meant by "regional organizations", particularly in the light of the definition used in Chapter VIII of the Charter.

16. The scope of the draft document fell within the provisions of Articles 52, 53 and 54 of the Charter which dealt with regional arrangements or agencies, concerned with the maintenance of international peace and security in a local context. It was therefore appropriate to concentrate on methods and mechanisms which had a direct impact on international peace and security and to put aside phenomena whose influence was indirect, such as illiteracy and poverty.

17. The Czech Republic welcomed the submission of working papers A/AC.182/L.76/Rev.1 and A/AC.182/L.77 on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter. Solving the question of assistance would help to ensure the proper application of Articles 49 and 50 of the Charter. In that context, his delegation considered that the work of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia and the efforts of the Secretary-General were moves in the right direction. The Security Council should, however, pay more attention to the adverse effects on other States of the sanctions provided for under Chapter VII of the Charter. In elaborating guidelines for the application of measures provided for under Chapter VII, the Security Council should give due consideration to the realities of the region.

(Mr. Vanhara, Czech Republic)

There were many problems, including those relating to the transshipment of goods on the Danube River through the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro). Several requirements instituted by the Security Council Committee established pursuant to resolution 724 (1991), regarding the transshipment of goods through the territory of the former Yugoslavia were unrealistic and seemed to be the work of international bureaucrats rather than specialists.

18. With regard to the draft United Nations rules for the conciliation of disputes between States (A/AC.182/L.75), submitted by Guatemala, it was to be hoped that the Special Committee would approve a final version at its next session. In that connection, the sponsor of the document should be able to reflect the latest developments in the field of the peaceful settlement of international disputes, including the provisions of the Convention on Conciliation and Arbitration adopted within the framework of the Conference on Security and Cooperation in Europe (CSCE). Moreover, to be applicable, the text should remain in the form of model rules. It might also contain less detail on how to institute a conciliation procedure. In addition, the existence of a dispute, as well as the express agreement of the States, should be defined as necessary conditions for the application of the conciliation rules. The States parties to the dispute should also retain the possibility of resorting to conciliation at any stage of the dispute without reference to the "diplomatic channel" as a precondition. Lastly, the possibility of the Secretary-General seeking assistance from a conciliation commission should be deleted from the final version of the document: the Secretariat of the United Nations must remain neutral vis-à-vis the parties to a dispute.

19. With regard to the agenda for the Special Committee's next session, priority should be accorded to measures concerning the maintenance of international peace and security and, in that context, to the proposal on the improvement of the cooperation between the United Nations and regional organizations. Due consideration should also be given to means for the peaceful settlement of international disputes and the final version of the conciliation rules.

20. Mrs. BOTERO (Colombia) said she believed that it was the responsibility of the Sixth Committee to provide directives and guidelines for possible changes in the Charter in order to strengthen the role of the Organization and enhance the effectiveness of its various organs.

21. In that regard, Colombia had on many occasions stressed the need to make the Security Council's decision-making process more democratic and to improve its functioning. The number of permanent and non-permanent members of the Council should be increased, in view of the larger number of Member States, the new realities of international life and, above all, the need for equitable representation of the various regional groups. As far as its method of functioning was concerned, the Council was too apt to invoke, improperly, Chapter VII of the Charter, which had been conceived as a last resort for use in situations so serious that they justified the adoption of special enforcement measures, at the expense of Chapter VI, relating to the pacific settlement of disputes. The United Nations and its Member States should have recourse more often to Article 33 of the Charter, or should at least make every effort to do

(Mrs. Botero, Colombia)

so. The concept of preventive diplomacy, so often referred to in recent days, boiled down to the effective application of the mechanisms provided for in Article 33 of the Charter, including recourse to the International Court of Justice. In that connection, and on the basis of the resolution recently adopted by the General Assembly on the Agenda for Peace (A/47/L.65), the Special Committee should examine the Secretary-General's recommendations on the subject, including those relating to requests for advisory opinions.

22. The Council should also revise the formula of daily informal consultations, from which the other members of the General Assembly were excluded, in the interests of greater transparency. Her delegation failed to understand the reluctance felt by delegations on that point, when it was well known that the more representative the Council appeared to be in carrying out its functions, the more legitimate were its decisions, and that, under Article 24 of the Charter, it acted on behalf of all the Members of the Organization. Similarly, some consideration should be given to the possibility of inviting States interested in a particular question to take part in the informal consultations on it.

23. There was a growing feeling that the Council had gradually and illegally extended its powers, thus encroaching on the fields of competence of other United Nations organs. That being the case, the Special Committee should begin to consider the idea of setting up a constitutional control body competent to decide on the legality of measures taken by United Nations organs. In point of fact, while such organs needed to have room for manoeuvre and interpretation to enable them to discharge their functions effectively - in particular the Security Council in respect of the maintenance of international peace and security - they could not enjoy absolute sovereignty, since they were the embodiment of the collective will of Member States expressed in the Charter. A constitutional control body would have the advantage of contributing to the progressive development of international law and the improvement of the United Nations system. Furthermore, an independent body, particularly at a time when the Security Council frequently took decisions on very diverse matters and resorted improperly to Chapter VII of the Charter, would make it possible to strengthen the sense of responsibility of United Nations organs in exercising the powers delegated to them by all Member States and to avoid abuses of power while at the same time legitimizing the measures taken by the Council. It should be emphasized that, far from being intended to strip the Security Council of its power, constitutional control would help to dissuade it from taking decisions on matters which the constitutional control body judged to be outside its field of competence, without going so far as to call in question specific decisions which the Council had previously adopted.

24. Turning to the organization of work of the Special Committee, she regretted that the working papers on the strengthening of the role of the Organization and the enhancement of the Security Council's effectiveness had hardly been considered at the previous session, and she expressed the hope that, at its next session, the Special Committee would give equitable and democratic consideration to all the proposals before it.

25. The working paper on the cooperation between the United Nations and the regional organizations should not take the form of a declaration. Colombia was

(Mrs. Botero, Colombia)

in favour of revitalizing Chapter VIII of the Charter, provided that there was effective coordination among the various parties involved and, at the same time, the autonomy of the regional bodies was respected. The end of the cold war undoubtedly opened the way for such cooperation and, to a certain extent, offered the possibility of relieving the Organization of responsibility for a number of questions that could be solved regionally. At the same time, the Organization could not ipso facto start decentralizing its activities, particularly those concerned with the maintenance of international peace and security. Furthermore, many of the regional bodies did not have as broad a mandate as the United Nations, nor one which was as capable of ingenious interpretation as the United Nations Charter. Furthermore, regional Powers could sometimes block the legitimate claims of small States in a particular region. On those grounds, her delegation attached the greatest importance to the sovereign right of States to appeal to the world body or to a regional body for the settlement of disputes. Lastly, she considered that Security Council authorization should be required for the implementation of enforcement measures under Chapter VII of the Charter.

26. Mr. DOPKYUNAS (Belarus) thought that the functioning of the main organs of the United Nations, as envisaged by the Charter, was effective. While his delegation actively supported proposals by Member States which stressed the need to strengthen the role of such key organs as the General Assembly and the International Court of Justice, improve the interaction between those organs and make their procedures more democratic, it did not underestimate the potential for adaptation to the new challenges of the time which had been included in the Charter, the Organization's basic document, from the outset. Although at a certain stage it might be necessary to amend the Charter, that would hardly constitute a guarantee of an improvement in the Organization's effectiveness or a reaffirmation of its role in the new historical conditions. First and foremost, it was continuity and the more effective realization of the Charter's potential that were the way to strengthen the role of the Organization.

27. It was out of a spirit of respect for the Organization's written and unwritten traditions that the Republic of Belarus had put itself forward as a candidate in the forthcoming elections to the Security Council. Respect for the principles of rotation and equitable geographical distribution - major principles of the Organization - was ensured not so much by any particular provision of the Charter but by the goodwill and spirit of responsibility of Member States.

28. The regional organizations were an important element in the system for the maintenance of international peace and security. The draft document submitted to the Special Committee by the Russian Federation on the improvement of the cooperation between the United Nations and the regional organizations, had his delegation's support. It was convinced that there should be a broad interpretation of the concept of international security and that the whole diversity and specific nature of the regional organizations should be taken into account.

29. The revised draft entitled "United Nations rules for the conciliation of disputes between States", submitted by the delegation of Guatemala, was a real contribution to the elaboration of mechanisms for the prevention and peaceful

(Mr. Dopkyunas, Belarus)

settlement of disputes between States. In particular, it could serve as an inspiration for the Minsk Group of CSCE, which was currently working on the peaceful settlement of the Nagorny-Karabakh conflict.

30. His delegation had also studied with great attention the working papers on the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII. A set of procedures needed to be established for the Security Council to follow in considering requests for assistance from the States affected.

31. Mr. CHEN Jian (China) said that the various proposals before the Special Committee concerning questions such as the expansion and democratization of the Security Council and the enhancement of the efficiency of the United Nations were not only conducive to the continued development and improvement of the United Nations but would also help it to address the concerns of the international community in general and to maintain peace and security in particular. But because restructuring the General Assembly and the Security Council was a complicated issue and involved the interests of all parties, decisions about it should be arrived at by consensus. All proposals to that end should be aimed at strengthening rather than attacking the current United Nations mechanisms, which had proven effective in practice.

32. The Draft Declaration on the improvement of cooperation between the United Nations and Regional Organizations submitted by the Russian Federation (A/AC.182/L.72/Rev.1) would contribute to the discussion of that question. Under Chapter VIII of the United Nations Charter, matters appropriate for regional action could be dealt with through regional arrangements or agencies provided that such arrangements or agencies and their activities were consistent with the Purposes and Principles of the United Nations. Accordingly, regional organizations needed to strengthen their ability to settle regional conflicts so that they could better assist the United Nations in preserving international peace and security. However, organizations established by the States of a given region were often limited in their functions and usually did not have the necessary means to maintain peace and security in the region in question. Discussion of the question of cooperation between the United Nations and regional organizations should not be expanded beyond the framework of Chapter VIII of the Charter to include economic, social, cultural or human rights issues. Moreover, enhancement of such cooperation should be based on respect for the charters of the regional organizations and the wishes of their sovereign member States. Also, given the variety in the statuses of the organizations in question, a single model for cooperation should not be sought.

33. In the view of his delegation, discussion of the question of assisting third States affected by the application of sanctions under Chapter VII of the Charter could only contribute to the full application of Security Council resolutions. China was participating actively in discussions on various assistance programmes with a view to providing effective, practical solutions. It was pleased to note that the Working Group had held in-depth discussions of the report of the Secretary-General entitled "An Agenda for Peace" and that the General Assembly had adopted a resolution on that subject prior to the start of its forty-eighth session.

(Mr. Chen Jian, China)

34. The text submitted by Guatemala on United Nations rules for the conciliation of disputes between States was a considerable improvement over the previous version. In particular, the deletion of the part concerning single conciliators had made it a good basis for discussion. However, the provisions of the new draft were on the whole still much too specific. Conciliation was a very flexible procedure for settling disputes that was chosen by the parties because it allowed them to take initiative. The provisions in the new draft concerning issues such as the scope of the rules and the procedure for appointing conciliators did not really allow for the flexibility required in a conciliation process. As to the role played by the Secretary-General in the conciliation process, his delegation concurred with the comment made by the Legal Counsel of the Secretary-General at the Special Committee's 1993 session, to the effect that the Secretary-General should determine the extent to which he could provide assistance without compromising the neutrality of the Secretariat.

35. Mr. MOUBARAK (Libyan Arab Jamahiriya) expressed the fervent hope that the Special Committee would be able to find positive answers to the many questions involving the Charter and the maintenance of international peace and security that continued to hinder the work of the United Nations and prevented the Organization from implementing the principles on which it was founded. The basic problems stemmed from the veto power exercised by the permanent members of the Security Council and from the membership of the Council. In 1990 his delegation had called for the preparation of a legal study containing constructive proposals for eliminating those difficulties. It was pleased to note that its proposal for amending the Charter and revising the Council's voting methods had been favourably received by many countries and openly discussed in several international forums. His delegation, which had participated as an observer in the work of the Special Committee, had submitted a proposal aimed at enhancing the effectiveness of the Security Council, issued as document A/AC.182/1993/CRP.1 and reproduced in paragraph 93 of the Special Committee's report (A/48/33). It very much regretted that the document in question had not yet been considered, which was not in keeping with paragraph 3 (a) of General Assembly resolution 47/38.

36. That revised proposal responded to the desire of many Member States to strengthen the role of the United Nations, and specifically the Security Council, by making it more effective and keeping it from being paralysed when urgent decisions were needed. If the Security Council had failed in its mission, which was to ensure the primacy of law, it was because improper application of the principle of unanimity had prevented it from taking effective decisions and resolving many international problems that represented threats to international peace and security, such as the question of Palestine or that of South Africa. It was necessary to tackle head on the issue of changing the Council's working methods, and that was precisely what his country proposed in the document in question. The incapacity and impotence of the Council were mainly the result of a veto-based collective security system that was doomed to failure because it prevented the Council from taking action against one of its permanent members. The veto gave the permanent members of the Council a means of monopoly, which was unfair in a world in which all the Members of the United Nations were supposed to be equal, whether rich or poor, large or small. It was necessary to restrict the veto and to take steps to phase it out. The principle of unanimity should not be used to defend aggression, occupation and injustice.

(Mr. Moubarak, Libyan Arab Jamahiriya)

The permanent members of the Council should set aside their selfish interests and be guided by those of the international community, while avoiding policies based on a double standard.

37. It was also necessary to expand the membership of the Security Council to reflect the great growth in the number of Members of the General Assembly. The role of the Assembly should be strengthened in view of the powers for maintaining international peace and security conferred on it by Articles 10 and 11 of the Charter. Redefining the relationship between the Security Council and the General Assembly more equitably should restore the credibility of the Council and ensure the implementation of its resolutions. It was important for the Special Committee to give due consideration to his delegation's proposals with a view to taking the appropriate decisions.

38. Mr. DZUNDEV (The Former Yugoslav Republic of Macedonia) stressed that all obligations under the Charter had become more significant and more relevant since the end of the cold war. The implementation of Article 50 of the Charter of the United Nations was essential for many Member States and the Committee should give due consideration to the matter. His delegation fully supported working papers A/AC.182/L.77 and A/AC.182/L.76/Rev.1.

39. In that connection, he wished to repeat that his country had been seriously affected by the sanctions imposed against Iraq and Libya and had endured tremendous damage as a result of the implementation of the sanctions against Serbia and Montenegro. In 1993 alone, the gross national product of the former Yugoslav Republic of Macedonia had been cut in half as a result of the sanctions; its external trade had been reduced to critical levels; and its transportation costs had increased sharply. Sanctions imposed under the Charter of the United Nations should not endanger the economic situation and stability of third countries and yet, in the case of the former Yugoslav Republic of Macedonia, the very existence of the economy was in jeopardy. It was therefore regrettable that sufficient attention had not been paid to Article 50 of the Charter when sanctions had been imposed. One might even wonder what purpose the Article served if permanent measures were not taken urgently to assist the most affected countries. The current session of the General Assembly should seriously consider the issue and request the Security Council to act urgently and efficiently in order to assist without delay the countries most affected by the sanctions it had imposed. Otherwise, the Organization might well be discredited. If Member States were obligated to abide by the decisions of the Security Council in accordance with the Charter the Security Council should, at the same time, take all factors into account before deciding on such an important issue as the imposition of sanctions.

40. His delegation would propose a number of amendments to the working papers when they were submitted as draft resolutions requiring that: first, before the imposition of sanctions, the Security Council should be provided with precise information on the consequences for the most affected countries; second, the implementation of Article 50 should be fully and specifically covered in the Council's resolution; and, lastly, the most affected countries should as a rule take part in decisions on the imposition of sanctions.

41. Mr. DASTIS (Spain) said that the primary objective of the United Nations was the maintenance of international peace and security and that, accordingly, it should seek a peaceful settlement to any dispute that posed a threat in that regard. That was the Special Committee's aim in considering various proposals designed to strengthen the Organization and enhance the effectiveness of its activities.

42. Concerning the maintenance of international peace and security, his delegation reaffirmed its support for the thrust of the "Draft Declaration on the Improvement of Cooperation between the United Nations and Regional Organizations" (A/AC.182/L.72/Rev.1) submitted by the Russian Federation and was particularly pleased that a fair number of regional organizations contributing to the maintenance of international peace and security had taken part in the discussion of the document. He invited the United Nations and the regional organizations to pursue their fruitful dialogue. That alone would guarantee the preparation of a document acceptable to all.

43. The scope of the draft declaration still had to be precisely defined. In his delegation's view, it should be confined to the maintenance of peace and security, although that concept should be understood broadly as in the Secretary-General's "An Agenda for Peace", to include, in particular, economic, social and humanitarian concerns as part of post-conflict peace-building.

44. Referring to the other important issue considered by the Special Committee at its most recent session, namely, the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, he said that his delegation believed that although no one would dispute the legally binding nature of the measures adopted by the Security Council under Chapter VII, it should not be forgotten that such measures were even more effective if the difficulties experienced by certain countries in implementing them were taken into account; and yet the provisions of Article 50 of the Charter did not sufficiently address those difficulties. His delegation was therefore prepared to continue the consideration of the working papers (A/AC.182/L.76/Rev.1 and A/AC.182/L.77), whose very aim was to develop those provisions. It was best not to raise false hopes in that regard, for it did not seem realistic to expect immediate, wide-ranging results. In that regard, his delegation preferred case-by-case solutions. However, such an approach did not preclude formulating general rules; it merely meant that those rules should be viewed as entailing obligations with regard to conduct, not results.

45. While expressing gratitude to the Cuban and Libyan delegations for submitting the working papers entitled "Strengthening of the role of the Organization and enhancement of its efficiency" (A/AC.182/1993/CRP.2) and "Revised proposal submitted by the Socialist People's Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security" (A/AC.182/1993/CRP.1), respectively, it was his delegation's view that the question of reforming the structure of the Security Council should be considered in plenary meetings of the General Assembly under agenda item 33, entitled "Question of equitable representation on and increase in the membership of the Security Council". It should also be pointed out, however, that in regard to the transparency of its

(Mr. Dastis, Spain)

work, the Security Council had already taken certain measures along the lines of the suggestions put forward by the Cuban delegation.

46. Concerning the peaceful settlement of disputes, his delegation believed that the draft United Nations rules for the conciliation of disputes between States submitted by the Guatemalan delegation had been considerably improved. It was convinced that a text acceptable to all could be adopted at the next session of the Special Committee. None the less, his delegation viewed conciliation as the final stage in an eminently flexible procedure designed to assist States in opening channels of communication between them by facilitating contacts and proposing various approaches to the settlement of disputes within the framework of an overall mechanism that would encourage recourse to conciliation. In that connection, at its next session, the Special Committee should begin thinking about the establishment of such a mechanism, which could be defined in a resolution whose annex would contain the draft rules for conciliation.

47. His delegation also hoped that, at its next session, the Special Committee would devote some time to the consideration of the role of the International Court of Justice in the peaceful settlement of disputes and in the maintenance of international peace and security in general, on the basis of, inter alia, the various interesting proposals put forward by the Secretary-General in "An Agenda for Peace".

48. Concerning the Special Committee's programme of work, his delegation believed that there was no need for the Special Committee to take an immediate decision on the proposals submitted by certain delegations concerning new issues it should consider. It would be preferable for the Special Committee to wait until the basic documents covering each question in detail and proposing a sound basis for future work had been submitted to it.

49. In the end, the best thing the Special Committee could do at the current juncture to help the United Nations meet the ever-increasing demands placed on it was to complete its current programme of work as rapidly as possible, thereby contributing to the strengthening of the Organization.

The meeting rose at 4.55 p.m.